

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Review Item:

New Restraints and Seclusion Regulation (Regulation under separate cover)

Applicable Statute or Regulation:

KRS 156.160 (1) (g)

History/Background:

Existing Policy. Kentucky currently has no statute or regulation on the use of restraints or seclusion in public schools. In 2000, the Commissioner of Education issued guidance on the *Effective Use of Time-Out*. The focus of the guidance was seclusionary time-out for all students. No guidance was provided on the use of restraints.

In 2009, the Government Accountability Office (GAO) began collecting information for Congress on the use of restraints, seclusion and aversives in public schools. The GAO report detailed serious instances of abuse of restraints and seclusion, some of which resulted in students' deaths. A copy of the report is included as Attachment A.

The Secretary of the U.S. Department of Education, Arne Duncan, followed the GAO report with a letter to states (Attachment B). The letter requested Chief State School Officers to review state policies and guidance on restraints and seclusion in schools and then, develop or revise the policies and guidelines, if needed. The Secretary maintained that having revised policies and guidance in place would *"help ensure that no child is subjected to the abusive or potentially deadly use of seclusion or restraint in a school."*

Commissioner Holliday wrote to local superintendents in September 2009 and forwarded Secretary Duncan's correspondence. The Commissioner cited Secretary Duncan's reference to the use of positive behavior interventions and supports as a means to accomplish the prevention of aggressive behavior. The Council for Children with Behavior Disorders' (CCBD) position papers on the use of restraint and seclusion in school settings were also sent to the superintendents (Attachments C and D).

As promised by the Commissioner in his correspondence, KDE convened a stakeholder group in the fall of 2009 to review Kentucky's existing guidance. The group's work was placed on hold, while the Kentucky Department of Education (KDE) waited for the United States Department of Education's policies and guidance, which were thought to be coming shortly.

2010-11 Academic Year

While monitoring developments at the federal level, KDE became increasingly concerned about reports of the use of restraint and seclusion in Kentucky schools. During the 2010-11 academic year, KDE investigated three allegations of inappropriate use of restraint or seclusion of students with disabilities. KDE subsequently cited the school districts for violating the students' right to a Free Appropriate Public Education under the Individuals with Disabilities Education Act (IDEA).

During the summer of 2011, Kentucky's Protection and Advocacy (P&A) office met with KDE's Office of Legal and Legislative Services and the Office of Next Generation Learners to discuss the inappropriate restraint or seclusion of students with disabilities in public schools. P&A advised KDE of two recent incidents. One incident involved a student nearly asphyxiated while being restrained. A second incident involved a student who was secluded in a window-less, unvented closet all day for most of the school year, suffering severe emotional distress. P&A was also advised by a school district's lawyer that the district was not prohibited from restraining students since Kentucky had no law on restraints.

As a result, KDE e-mailed the Directors of Special Education in July to advise them of the recent situations involving inappropriate restraint and seclusion of students with disabilities (Attachment E). The e-mail detailed KDE's recent district citations for IDEA violations related to restraint and seclusion of students with disabilities, and provided notice of Dr. Holliday's intent to request the Kentucky Board of Education to promulgate regulations on restraint and seclusion on behalf of all Kentucky students. The Commissioner subsequently forwarded the e-mail to all superintendents.

No Child Left Behind (NCLB) requires educational programs and practices to be based on scientifically-based research. The IDEA, as reauthorized in 2004, obliges Admissions and Release Committees to provide students with disabilities with services that are guided by peer-reviewed research.

KDE desires regulatory language to redirect restraint and seclusion practices in order to promote positive behavior supports for the safety and protection of Kentucky students so that learning can be supported. The draft regulation, which will be sent to the board under separate cover, will be Attachment F.

Impact on Getting to Proficiency:

The use of positive behavior supports is an evidenced-based practice that, if done correctly, is successful at maintaining students in their learning environment. The delivery of instruction in a safe learning environment not only assists students with problem behaviors in getting to proficiency, it allows the rest of the class to receive instruction in a safe environment.

Groups Consulted and Brief Summary of Responses:

The Local Superintendents Advisory Council will review this regulation at its November meeting and provide comments.

The stakeholder group convened in 2009 was recently brought together to review the draft regulation. The stakeholder group includes representatives from the Kentucky School Boards Association, representatives from the Department of Behavioral Health, Development and Intellectual Disabilities, Protection and Advocacy, the parent of a high school student, Center for School Safety, Directors of Special Education, Special Education Cooperatives, KECSAC, and behavior consultants/school psychologists. The stakeholders had a number of comments, including:

- Clarifying situations in which restraint is appropriate when property is threatened by a student
- Clarifying who is governed by the regulation. Does it include School Resource Officers in school buildings, or classrooms in hospitals and juvenile justice centers?
- Prohibiting prone restraint
- Prohibiting prone and supine restraint
- Changing the definition of restraint
- Recommending immediate parent notification

Comments from the stakeholder group will be considered in revisions to the draft regulation made before the final approval.

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Commissioner of Education

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